



Commonwealth of Massachusetts State Ethics Commission

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SUFFOLK, ss.

COMMISSION ADJUDICATORY
DOCKET NO. 546

IN THE MATTER OF LOUIS ZWINGELSTEIN

DISPOSITION AGREEMENT

The State Ethics Commission ("Commission") and Louis Zwingelstein ("Zwingelstein") enter into this Disposition Agreement ("Agreement") pursuant to §5 of the Commission's Enforcement Procedures. This Agreement constitutes a consented to final order enforceable in the Superior Court, pursuant to G.L. c. 268B, §4(j).

On July 11, 1995, the Commission initiated, pursuant to G.L. c. 268B, §4(j), a preliminary inquiry into possible violations of the conflict of interest law, G.L. c. 268A, by Zwingelstein. The Commission has concluded its inquiry and, on February 14, 1996, found reasonable cause to believe that Zwingelstein violated G.L. c. 268A, §'17 and 19.

The Commission and Zwingelstein now agree to the following findings of fact and conclusions of law:

1. Zwingelstein was, during the time relevant, a Sheffield Conservation Commission member. As such, Zwingelstein was a municipal employee as that term is defined in G.L. c. 268A, §1.
2. During the time relevant, Zwingelstein has owned and is president of Soil Tech, Inc. ("Soil Tech"), a Massachusetts corporation which provides a wide range of engineering consulting services. Zwingelstein receives a weekly salary from Soil Tech.
3. In or about December 1993, William Harris, a Sheffield resident, hired Soil Tech to design a plan for a fire pond that Harris wanted to build on his property in Sheffield.
4. Zwingelstein prepared the design, completing it on or about January 4, 1994. Harris paid Soil Tech for this design. Part of Zwingelstein's Soil Tech salary was attributable to the work he did on this design.^{1/}
5. In or about late December 1993, Harris applied to the Sheffield Conservation Commission for a determination of applicability regarding his intention to construct the pond.^{2/}
6. On January 28, 1994, the Conservation Commission signed Harris' determination of applicability (for permission to dig monitor wells to verify water levels), finding that although the work was within a buffer zone, it would not alter any wetlands. Zwingelstein participated in this by discussing and signing the determination of applicability.
7. In September 1994 (prior to September 22, 1994), Harris submitted a Notice of Intent to the Conservation Commission regarding his plan to construct the above pond.^{3/} The drawing submitted in connection with the Notice of Intent was based on the design prepared by Zwingelstein discussed above.
8. At a September 22, 1994 public hearing, the Conservation Commission reviewed Harris' Notice of Intent. Zwingelstein involved himself in the discussion of the Notice of Intent by, as a Conservation Commission

member, making comments in support of the project. At that time, the Commission continued the hearing, and decided to conduct a site visit. Zwingelstein supported those decisions.

9. On October 10, 1994, Zwingelstein (as a Conservation Commission member), along with certain other members of the Commission, viewed the site.^{4/}

10. On October 13, 1994, the Conservation Commission resumed the public hearing regarding the Harris Notice of Intent. Zwingelstein, acting as a Conservation Commission member, involved himself in the discussion. After some extensive discussion, the Commission, with Zwingelstein concurring, agreed to continue the hearing.

11. The Conservation Commission next considered the Notice of Intent on October 27, 1994. The Commission approved the Notice of Intent by a 2 to 1 vote. Zwingelstein was not present. According to Zwingelstein, he did not attend this meeting because, as he understood the conflict of interest law, while he could act as a private engineer regarding matters that would come before his board, and while he could discuss those matters as a member of the board, he could not participate in definitive votes on any such matters.^{5/}

12. At its October 27, 1994 meeting, the Conservation Commission decided to issue an Order of Conditions with the following conditions for the project: compliance with Fire Department fire pond standards; mulch would be made out of straw or hay from adjacent fields; pesticide, herbicide or any other chemical application would be regulated within the resource area of the project and the buffer zone; and the project would be carried out between July 1 and October 30, 1994.^{6/}

13. On January 25, 1995, Zwingelstein resigned as a Conservation Commission member.

14. Section 17(a) of G.L. c. 268A prohibits a municipal employee from directly or indirectly receiving compensation from anyone other than the municipality in relation to a particular matter in which the municipality has a direct and substantial interest.

15. The decisions made by the Conservation Commission regarding the determination of applicability and the notice of intent were particular matters.

16. The town had a direct and substantial interest in those particular matters.

17. Zwingelstein received \$1,100 (Harris paid to Soil Tech) for designing a plan which he knew would go before the Conservation Commission in relation to the notice of intent.

18. Therefore, by indirectly receiving compensation from Harris for designing a plan in relation to the Conservation Commission's decision regarding the notice of intent, Zwingelstein received compensation in relation to a particular matter in which the town had a direct and substantial interest, thereby violating §17(a).

19. Section 17(c) of G.L. c. 268A prohibits a municipal employee from acting as agent or attorney for anyone other than the municipality in relation to a particular matter in which the town has a direct and substantial interest.

20. By preparing and placing his initials on the above described plan, where he knew that plan was going to be submitted to the Conservation Commission, Zwingelstein acted as Harris' agent in relation to a particular matter in which the town had a direct and substantial interest, thereby violating §17(c).

21. Except as otherwise permitted by that section,^{7/} General Law c. 268A, §19 prohibits a municipal employee from participating as such in a particular matter in which to his knowledge he, a member of his immediate family, or a business organization the employee is involved with has a financial interest.

22. As discussed above, the decisions by the Conservation Commission regarding the determination of applicability and notice of intent were particular matters.^{8/}

23. Zwingelstein participated^{9/} in the decision regarding the determination of applicability by discussing it at the January 1994 Conservation Commission meeting, and by signing the determination. He participated in the Notice of Intent by discussing the issue at Conservation Commission meetings on September 22, 1994 and

October 27, 1994; and by going on the site visit on October 10, 1994.

24. At the time he so acted, Zwingelstein was aware that Soil Tech would be the clerk of the works for the project if the Conservation Commission approved the project. Consequently, he knew that he and/or a business organization by which he was employed had a financial interest in these particular matters.

25. Therefore, by acting as described above, Zwingelstein participated as a Conservation Commission member in particular matters in which to his knowledge he and/or a business organization by which he was employed had a financial interest, thereby violating §19.

26. Zwingelstein cooperated with the Commission's investigation.

In view of the foregoing violations of G.L. c. 268A by Zwingelstein, the Commission has determined that the public interest would be served by the disposition of this matter without further enforcement proceedings, on the basis of the following terms and conditions agreed to by Zwingelstein:

(1) that Zwingelstein pay to the Commission the sum of two thousand dollars (\$2,000) as a civil penalty for violating G.L. c. 268A, §'17 and 19;

(2) that Zwingelstein waive all rights to contest the findings of fact, conclusions of law and terms and conditions contained in this Agreement in this or any other related administrative or judicial proceedings to which the Commission is or may be a party.

DATE: March 11, 1996

^{1/} Harris paid Soil Tech approximately \$1,100 for this design work. In addition, Zwingelstein would supervise the construction of the fire pond, discussed infra.

^{2/} A determination of applicability is a filing required with the Conservation Commission for projects near wetlands, per G.L. c. 131, §40 (Massachusetts Wetlands Protection Act).

^{3/} A Notice of Intent is a filing required when a project takes place within 100 feet of a "buffer zone" (wetlands, river, lakes or other bodies of water). The notice describes the proposed project and how it would affect the buffer zone.

^{4/} The purpose of a Conservation Commission site visit in connection with a Notice of Intent is to view the project site and ask questions. Site visits are not required, and are not conducted for all projects.

^{5/} As is discussed infra, Zwingelstein's understanding of the law was incorrect.

^{6/} Zwingelstein terminated his and his company's involvement with the project in June 1995, after being contacted by the State Ethics Commission. Thus, he did not serve as clerk of the works on the project.

^{7/} None of the exceptions applies.

^{8/} "Particular matter," any judicial or other proceeding, application, submission, request for a ruling or other determination, contract, claim, controversy, charge, accusation, arrest, decision, determination, finding, but excluding enactment of general legislation by the general court and petitions of cities, towns, counties and districts for special laws related to their governmental organizations, powers, duties, finances and property. G.L. c. 268A, §1(k).

^{9/} "Participate," participate in agency action or in a particular matter personally and substantially as a state, county or municipal employee, through approval, disapproval, decision, recommendation, the rendering of advice, investigation or otherwise. G.L. c. 268A, §1(j).